

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

**Vote No. 53**

April 1, 1998, 12:09 pm  
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**105th Con**

(See other side)

YEAS (51)			NAYS (47)			NOT VOTING (2)	
Republicans (50 or 91%)		Democrats (1 or 2%)	Republicans (5 or 9%)	Democrats (42 or 98%)		Republicans (0)	Democrats (2)
Abraham	Hutchinson	Hollings	Chafee	Akaka	Inouye		Kennedy <sup>-2</sup>
Allard	Hutchison		Collins	Baucus	Johnson		Kerry <sup>-2</sup>
Ashcroft	Inhofe		D'Amato	Biden	Kerrey		
Bennett	Jeffords		Snowe	Bingaman	Kohl		
Bond	Kempthorne		Specter	Boxer	Landrieu		
Brownback	Kyl			Breaux	Lautenberg		
Burns	Lott			Bryan	Leahy		
Campbell	Lugar			Bumpers	Levin		
Coats	Mack			Byrd	Lieberman		
Cochran	McCain			Cleland	Mikulski		
Coverdell	McConnell			Conrad	Moseley-Braun		
Craig	Murkowski			Daschle	Moynihan		
DeWine	Nickles			Dodd	Murray		
Domenici	Roberts			Dorgan	Reed		
Enzi	Roth			Durbin	Reid		
Faircloth	Santorum			Feingold	Robb		
Frist	Sessions			Feinstein	Rockefeller		
Gorton	Shelby			Ford	Sarbanes		
Gramm	Smith, Bob			Glenn	Torricelli		
Grams	Smith, Gordon			Graham	Wellstone		
Grassley	Stevens			Harkin	Wyden		
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						

## EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

## SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

or of hiring private health care professionals. Some Senators have claimed that this right would just raise prices for America's elderly Americans and would result in fraud, and they have even made the contradictory argument that the amendment is not necessary because Medicare recipients already have precisely the right we are talking about. None of their arguments is valid.

Until they were stopped by an administrative ruling by the Clinton Administration, Medicare recipients could pay for physician health care services covered by Medicare through Medicare, or, if they so chose, they could pay for them using other means. The Clinton Administration then unilaterally decided that they could only pay with Medicare funds. In the Balanced Budget Act of last year, a provision was initially included to reverse that ruling (see 105th Congress, 1st session, vote No. 120), but it was taken out after a veto threat from President Clinton. Instead, a provision was added saying that senior citizens could only get health care outside of the Medicare system from a provider who had not taken any Medicare payments for at least 2 years. This supposed compromise, though, was a cover for doing nothing because nearly all doctors take some Medicare patients. For most elderly Americans, the right to go to a doctor who does not take any Medicare patients is an empty right because they cannot find such doctors.

Though most doctors take Medicare patients, it is a very common practice for them to limit the number of such patients they take because Medicare payment rates cover, on average, only 70 percent of physicians' costs. In other words, doctors lose money when they treat Medicare patients, but they take as many as they can afford to anyway. The result is that health care is being rationed for senior citizens. Medicare recipients find it especially difficult to receive more expensive specialist care, and they find it especially difficult to receive care in more remote areas such as Alaska. They can contract for services not covered by Medicare Part B (doctors' services) but they can only get Medicare services from doctors at Medicare rates. Doctors who accept any non-Medicare payments from Medicare-eligible patients will be prosecuted for fraud if they have taken any Medicare funds within the past 2 years.

The first complaint of our colleagues is that they believe that giving this right back to senior citizens will subject them to fraud and abuse. In response, we note that they had this right without any problems for more than 2 decades before the Clinton Administration took it away. Also, we note that the amendment finds that strict protections against fraud and abuse should apply when the right is given back. We will happily work with our colleagues to eliminate all fraud and abuse in the Medicare program. Second, our colleagues have suggested that we are only talking about a small percentage of senior citizens, 4 percent, who have trouble finding Medicare coverage. However, "only" 4 percent comes out to 1,360,000 elderly Americans who have difficulty getting the health care treatment that they need. If they cannot find that treatment under Medicare, our colleagues think that it is just fine to deny them all treatment. We think our colleagues' attitude is appalling. Finally, our colleagues have made the contradictory argument that senior citizens already have the right to pay any Medicare doctor's bill privately. They can simply ask him not to submit a bill. If this claim were true, it would make all of our colleagues' other arguments against this amendment nonsensical, but the fact is that it is not true. No law or regulation allows such payment, and, in fact, the law passed last year specifically prohibits it.

Senior citizens do not need to be babysat by Members of Congress. They should be given the same health care choices that other Americans have. If Senators agree, then they will vote in favor of the Kyl amendment.

**Those opposing** the amendment contended:

The Kyl amendment would open the door to widespread abuse of America's senior citizens by America's doctors. Right now, when a Medicare recipient goes in for treatment, he or she knows exactly how much he or she will be charged. However, under our colleagues' proposal, that certainty will evaporate. A Medicare patient could be told by a doctor that he or she needed five tests, and that Medicare paid enough to cover the costs of four of those tests, but that for the fifth test the Medicare reimbursement would be too low so the patient would have to come up with a hefty additional amount out of his or her own pocket. This amendment does not express the sense of Congress in favor of giving Medicare recipients more choices--it expresses the sense of Congress in favor of giving doctors the right to increase their bills on all Medicare recipients. It expresses the sense of Congress in favor of taking advantage of senior citizens with widespread fraudulent billing practices. In our opinion, the fraud that would come from this amendment would be in response to a nonexistent problem. Most senior citizens report being satisfied with the availability of Medicare services, and only 4 percent of them report any trouble in getting health care under Medicare. Also, if for some reason any senior citizen wants to pay a bill privately, he or she just has to tell his or her doctor not to submit the bill to Medicare. Patients who want to can pay their entire medical bills out of their own pockets. They can even pay exorbitant amounts above the fair Medicare rates if they for some strange reason want to pay too much. We know our colleagues are well-intentioned in offering this amendment, but, in our estimation, their amendment expresses support for attacking a nonexistent problem with a solution that could subject all Medicare recipients to fraudulent billing practices. We therefore strongly oppose this amendment.